

**Detroit Painting Corp. and Michael K. Potter and James A. Potter III.** Cases 7-CA-34751(1) and 7-CA-34751(2)

August 14, 1996

**SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND FOX

On April 25, 1995, the National Labor Relations Board issued an order adopting, in the absence of exceptions, the Bench Decision of the administrative law judge directing the Respondent, Detroit Painting Corp., to make whole discriminatees Michael K. Potter and James A. Potter III for any losses they incurred as a result of the discrimination against them in violation of the National Labor Relations Act. On January 18, 1996, the U.S. Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order.

A controversy having arisen over the amounts of backpay and fringe benefit contributions due under the terms of the Board's enforced Order, on April 22, 1996, the Regional Director for Region 7 issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated May 23, 1996, the Regional Attorney for Region 7 advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by May 31, 1996, a Motion for Default Summary Judgment would be filed with the Board. The Respondent filed no answer.

On June 17, 1996, the General Counsel filed with the Board Motions to Transfer Cases to the Board and for Default Summary Judgment on the Pleadings, with exhibits attached. On June 19, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on the Motion for Summary Judgment**

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer

within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer,<sup>1</sup> we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the amounts due the discriminatees and the fringe benefit funds are as stated in the compliance specification and we will order payment by the Respondent of the amounts to the discriminatees and the fringe benefit funds,<sup>2</sup> plus interest accrued on the amounts to the date of payment.

**ORDER**

The National Labor Relations Board orders that the Respondent, Detroit Painting Corp., Detroit, Michigan, its officers, agents, successors, and assigns, shall make whole the discriminatees by paying the amounts set forth below to the discriminatees and the fringe benefit funds, with interest on the backpay owed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and any additional amounts accruing on the benefit fund contributions as prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979), minus

<sup>1</sup> Although the compliance specification indicates that the Respondent ceased operations on November 1, 1995, the fact that the Respondent may no longer be in business does not constitute good cause for the Respondent's failure to file an answer and is not a basis for denying the Motion for Summary Judgment. See, e.g., *Beaumont Glass Co.*, 316 NLRB 35 fn. 1 (1995).

<sup>2</sup> Although par. 11(b) of the compliance specification states that the Respondent's obligation to make whole the discriminatees' fringe benefit contribution accounts will be discharged by payment of the amounts due to the Union on behalf of the discriminatees, the General Counsel, in response to a supplemental Notice to Show Cause issued by the Board on July 6, 1996, asserts that this was inadvertent and that par. 11(b) should be read in conjunction with pars. 6(a) and 10(a) which correctly reference the fringe benefit contributions as being owed to the various fringe benefit funds rather than the Union. Accordingly, our Order requires the fringe benefit fund amounts due to be paid to the fringe benefit funds rather than the Union.

tax withholdings on the backpay due the discriminatees  
required by Federal and state laws:

Backpay:

Michael Potter:	\$14,403.64
James Potter:	\$23,771.00

TOTAL BACKPAY:	<u>\$38,174.64</u>
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Fringe Benefit Fund  
Contributions:

Michael Potter:	\$4,536.87
James Potter:	\$4,889.84

TOTAL CONTRIBUTIONS:	<u>\$9,426.71</u>
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<b>TOTAL BACKPAY AND CONTRIBUTIONS:</b>	<b>\$47,601.35</b>
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